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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,536	02/05/2004	Jacques Duchamp	07552.0023	4262

22852 7590 06/07/2006

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EXAMINER	
MENON, KRISHNAN S	
ART UNIT	**PAPER NUMBER**
1723	

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/771,536	DUCHAMP ET AL.	
	Examiner	Art Unit	
	Krishnan S. Menon	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 May 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-37* is/are pending in the application.

4a) Of the above claim(s) *21-34,36 and 37* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20 and 35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-37 are pending as originally filed.

Election/Restrictions

Applicant's election with traverse of group I, claims 1-20 and 35 in the reply filed on 5/26/06 is acknowledged. The traversal is on the ground(s) that the "alleged inventions" are in fact not distinct from each other, and there is no serious burden of search. This is not found persuasive because the support element in claims 1-20 can be used to support other devices such as filters. The device of claim 21 is not limited to support by a specific support element, it can be supported by any of the supports as claimed from claims 1-20, and also by other supports. The restriction requires only a showing of any one of the inventions being separately usable. With respect to the restriction between combination and sub-combination, claim 21, and therefore, claim 36, do not require the particulars of any subcombination claims, for the simple fact that claim 21 can have particulars form several other claims.

Applicant has not shown that the inventions are obvious variants or equivalents.

With respect to the burden of search, the sub-combination requires search in the field of supports (classes 312 and 248) and devices (classes 210 and 604), whereas the device require search in blood treatment (604) and filtration (210). Claims also belong to divergent subject matter having many different applications.

The requirement is still deemed proper and is therefore made FINAL.

Claims 21-34, 36 and 37 are withdrawn from consideration.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 and 35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 60 and 85-97 of copending Application No. 10/771,415, and claims 1 and 44-63 of copending Application 10/775,993. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the co-pending applications recite all the limitations claimed in the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"works housing area" has no antecedent basis. "Works area", which is introduced in claim 17 is assumed for examination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-6,12 and14-17, are rejected under 35 U.S.C. 102(b) as being anticipated by Vinci, WO 01/08722 (US 6,630,068 is equivalent and is used in the rejection).

Claims 1,2,4,12: Vinci teaches a support element having a base body and four connectors directly constrained to the body as claimed – see the figures, abstract and

column 2 lines 50-56. The connectors have differentiated interaxes for engaging with counter-connectors of treatment devices.

Claims 3,5: single piece with the body: the reference teaches the connectors as being attached to the body to form a single piece (connectors and the body form one unit as disclosed by the applicant in the specification and drawings) with the body.

Claim 6: connectors afford fluid passage between the blood treatment device and fluid distribution circuitry – see figures.

Claim 14: rigid material is implied: it provides mechanical support to the filter – see figures.

Claim 15, 16: connectors are aligned in a line on one side – see figure 2.

Claim 17: the support is part of the wall of the machine – see 4, figure 2. The machine accommodates the fluid distribution circuitry as claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 7-11, 13 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vinci as applied to claim 1 or 6 above, and further in view of GB 2 067 075.

Independent claim 35 recites the limitations of claims 1 and 7. Instant claims differ from the teaching of Vinci in the details of the connector, ie., the sealing collar, the

connecting wall and the annular seating (annular seating is the conical space between the sealing collar and the sealing wall). However, such details are similar to a "luer connector" as taught by the GB reference, and is known in the art and commonly used. It would be obvious to one of ordinary skill in the art at the time of invention to have the luer connector for the connectors of Vinci because luer connectors provide protection from contamination through contact by hand. The details recited in the claim correspond to the complementary external and internal cones as described in the reference.

3. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vinci as applied to claim 1,4 or 17, and further in view of EP 0 611 227.

Instant claims differ from the teaching of Vinci in the details of the works area, perimeter wall, connectors emerging form the perimeter wall, connectors are not aligned, and the perimeter wall cover. EP teaches the perimeter wall, the circuitry etc attached to the perimeter wall and the back side of the frontal wall, and the cover (see figures 1-7. The treatment module could be assembled to the perimeter wall as shown in figure 7, which would be an alternate, but equivalent arrangement, in which the connectors would be on the perimeter wall, and would not be in a line. It would be obvious to one of ordinary skill in the art at the time of invention to use the teaching of EP in the teaching of Vinci to have the treatment device enclosed as shown in EP for easy packaging, etc as taught by EP (column 9 lines 5-21).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S. Menon whose telephone number is 571-272-1143. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KS Menon 6/5/06

Krishnan S Menon
Examiner
Art Unit 1723